Office of Personnel Management

Federal Personnel Manual System

FPM Letter 810- 3

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SUBJECT: Agency Job Offers Under the Federal Employees' Compensation Act to Partially Disabled Employees

Washington, D. C. 20415
September 19, 1984

Heads of Departments and Independent Establishments:

1. The Department of Labor, Office of Workers' Compensation Programs (OWCP), has requested that the attached policy guidance on procedures for making job offers to partially disabled employees who are currently receiving compensation benefits be transmitted through the Federal Personnel Manual issuance system. This letter is the first of a series of FPM letters on the workers' compensation program which will be issued under an interagency agreement with the Department of Labor. DOL and OPM have agreed to this joint effort to facilitate communication of compensation program guidance to agency personnel officials. We have reviewed the text to insure that OWCP has accurately described personnel policy and practice.

2. A related FPM Letter 339-16, on requesting medical information to determine whether a job offer can be made to a partially disabled employee currently receiving compensation benefits, is being issued concurrently with this letter.

Donald J. Devine
Director

Attachment

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Inquiries: Section of Regulations and Procedures, OWCP, DOL, (202) 523-8463

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U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Federal Employees' Compensation
Washington, D.C. 20210

Agency Job Offers under the Federal Employees' Compensation Act to Partially Disabled Employees

Federal agencies generally try to provide work to employees who have sustained injuries in the performance of their duties. The employment may be restoration to the position held at the time of injury with accommodation for any physical restrictions, or placement in other positions at either the same or a lower rate of pay. Agencies have the authority and responsibility to identify opportunities for reemployment of partially disabled employees, and to offer employment when accommodations can be made to the individual's medical condition. Final determinations concerning the suitability of job offers and the reasonableness of an employee's refusal to accept an offer are the responsibility of the Office of Workers' Compensation Programs (OWCP).

The purpose of this issuance is to advise agencies on the procedures which should be followed in making an employment offer to a partially disabled employee who is currently receiving compensation benefits after the Continuation of Pay (COP) period has expired.

When an agency is able to offer work to an injured employee, it must notify the employee and OWCP in writing of the offer of employment. An agency may contact the employee by telephone to advise of the availability of a job, but the offer must be confirmed in writing to the employee and to OWCP before it can be considered a formal offer of employment.

When evaluating an employee for possible employment, the agency should consider the medical limitations resulting from the employment injury, any pre-existing medical condition, and any medical condition which may have developed subsequent to the employment injury. If the agency requires updated medical information to make an initial determination whether a position is within the employee's medical limitations (as authorized in 5 CFR 339.301 (b)), the request for information should precede the offer of employment, but it should include the same information about the duties and physical requirements of the position as would be included in the offer of employment. Guidance on obtaining medical information to support offers of employment to partially disabled employees is being published concurrently with this issuance (FPM Letter 339-16). A copy of any such medical evidence obtained by the agency should be sent to OWCP.

The offer of employment should contain the following information:

- A description of the duties to be performed;
- The specific physical requirements of the position and any special workload demands or unusual working conditions;
- The date the job will be available;
- The organizational and geographical location of the job;
- The date by which a response to this job offer is desired.

The notice to the employee about the job offer should not include a request for election of OPM benefits if the employee decides not to accept the job offer. OWCP will not consider the employee to have made an informed election of benefits unless the employee was advised by OWCP that the job is considered to be suitable, and notified of the consequences of a refusal without reasonable cause. An election between OPM and OWCP benefits will be offered when appropriate by OWCP.

If the employee accepts the job offered, the agency should notify OWCP at the earliest time possible of the date of return to duty. Benefits will be terminated or adjusted as of the date of return to duty. To avoid overpayments of compensation, it is preferable to notify OWCP by telephone, no later than close of business on the first day of return to duty, followed by submission of form CA-3.

OWCP, upon receipt of the offer of employment, will promptly evaluate the position to determine whether it is within the medical restrictions imposed by the employee's physician. If the job offer is determined to be suitable, OWCP will notify the employee and the agency in writing that the offer is found to be within the medical restrictions imposed, and that the employee is expected to accept the job or to show reasonable cause for refusal. OWCP will allow 30 days for the employee's response and will advise the employee that failure to accept suitable work or to respond within 30 days will result in termination of compensation benefits.

If the employee refuses the job offer without explanation or does not respond to the letter from OWCP, a compensation order will be issued terminating benefits. If the employee refuses the offer, but provides reasons in support of the refusal, OWCP will evaluate the reasons given and determine whether reasonable cause for refusal has been shown. If reasonable cause is not shown, a compensation order will be issued and benefits will be terminated. If reasonable cause is shown, OWCP will advise the agency and continue compensation at a level commensurate with the degree of disability.

If OWCP determines that the job offer is not suitable, it will notify the agency and provide assistance in identifying other accommodations which may be feasible to make the job offer suitable. To meet the test of suitability under the Federal Employees Compensation Act, such work must be within the physical capabilities of the employee. Generally, when an employee is capable of working four or more hours a day, and the position offered is for less than four hours, OWCP will find the position unsuitable. This is because less than four hours a day is regarded as sheltered employment and is reserved for the severely disabled. In these instances, OWCP encourages the agency to consider whether it can provide longer hours to the employee or place the employee in another position.

Reasonable cause for refusing a job offer may include, but is not limited to:

- Additional evidence which supports a conclusion that the job requirements exceed the physical or emotional capabilities of the employee.

- The job offer is for less than four hours a day and the employee is capable of working longer.

- The employee has elected OPM benefits over OWCP benefits.

- Returning to the area where the job has been offered is medically contraindicated.

- The expense of relocating is financially prohibitive for the employee.

- The position offered is temporary rather than permanent, unless the original appointment was temporary.

- The employee has found other work which fairly and reasonably reflects his or her earning capacity. (In this case, appropriate action would be taken to adjust or terminate compensation.)

If an employee is receiving OWCP benefits for a schedule disability and is concurrently in receipt of OPM benefits (either disability or regular retirement), a job offer may be refused without loss of benefits since the employee is entitled to receive both. If, upon expiration of a schedule award, the employee elects to receive OWCP benefits in lieu of OPM benefits, and refuses an offer of suitable employment, benefits may be terminated. OWCP will decide each case on its merits.

When making an offer of employment, the agency must assure that the offered position will be available during the period required to advise the employee of suitability and to allow for the employee to respond. An employee might refuse a job offer initially, then accept the offer subsequent to receiving a letter from OWCP. If the job is not available at the time the employee accepts the offer, OWCP will find that suitable work was not available and benefits will continue.

The success of efforts to return employees to gainful employment while providing procedural due process requires close cooperation between employing agencies and OWCP. Early notification of job offers and complete information about the physical and other requirements of the job will aid OWCP in making its decisions. For its part, OWCP recognizes its responsibility to evaluate job offers and to notify employees quickly to avoid undue delays.

Inquiries should be directed to the Section of Regulations and Procedures, OWCP, (202) 523-8463.

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